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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ROBERT N. GARFF, an individual; and
WILLIAM N. HAGLER, as Trustee for the
William N. & Jean S. Hagler Trust, a New
Mexico Trust,

Plaintiffs,

v.

XZERES CORP., a Nevada corporation,

Defendant.

Case No. 3:18-cv-00360-MO

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT**

I, Jeffrey Bittenbinder, declare as follows:

1. I am the Vice President, Secretary and Treasurer of Xzeres Corp (“Xzeres”). I am over the age of 18 and competent in all respects to make this Declaration. I am authorized by Xzeres to provide this Declaration, and submit this Declaration in support of Xzeres’ Motion for summary Judgment, and pursuant to 28 U.S.C. Section 1746. Each statement in this Declaration is within my personal knowledge and is true and correct.

2. Attached hereto as Exhibit A-1 are true and correct copies of the April 1, 2013 promissory notes (“Notes”) executed between Xzeres and Plaintiffs Robert N. Garff (“Garff”) and William N. Hagler (“Hagler”) (collectively, “Plaintiffs”). True and correct copies of the first amendments to the promissory notes are attached as Exhibit A-2; true and correct copies of the second amendments to the promissory notes are attached hereto as Exhibit A-3; and true and correct copies of the third amendments to the promissory notes are attached hereto as Exhibit A-4.

3. Attached hereto as Exhibit A-5 is a true and correct copy of a May 10, 2013 Xzeres’ Board Meeting Attendance Log, which reflects Plaintiffs’ attendance at the board meeting as Xzeres Board Appointees.

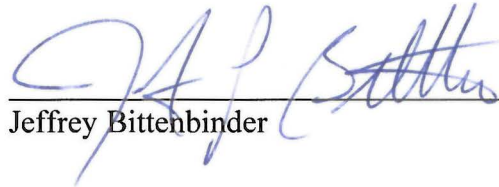
4. Attached hereto as Exhibit A-6 is a true and correct copy of the August 13, 2014 Written Consent of the Board of Directors, in which the Xzeres board members consented to obtaining a line of credit from Wells Fargo Bank, N.A.

5. Attached hereto as Exhibit A-7 is a true and correct copy of the Written Consent to Action Without Meeting of the Directors of Xzeres Corp., in which the board members consented to the merger plan with Xzeres Merger Sub, Inc.

6. The merger between Xzeres and Xzeres Merger Sub, Inc. resulted in a surviving entity called Xzeres Holdings, LLC ("Xzeres Holdings"). Following the merger, Xzeres Holdings assumed the Xzeres debt previously held by Wells Fargo Bank, N.A. through a line of credit. Accordingly, the debt associated with the line of credit is now owed by Xzeres to Xzeres Holdings. To date, Xzeres has not paid off this debt.

I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE IN COURT AND ARE SUBJECT TO PENALTY FOR PERJURY.

DATED this 12th day of February, 2019.



Jeffrey Bittenbinder

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DECLARATION OF JEFFREY BITTENBINDER IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons:

Nicholas J. Henderson
Jeremy G. Tolchin
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Attorneys for Plaintiffs

DATED this 12th day of February, 2019.

s/ Daniel P. Larsen

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Attorneys for Defendant Xzeres Corp.